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**TO:** Tina Walls

**RECEIVED**

**DATE:** October 23, 1995

**FROM:** Jim Lemperes

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**SUBJECT: Massachusetts Plan**

**DENISE F. KEANE**

*JTM*

An outline of our approach to the pending initiative problem in Massachusetts:

**Phase I: Attorney General's Title and Summary Process**

As you know, we had the opportunity to submit suggestions to the AG concerning the content of the ballot summary and whether the question should be certified. Upon the collective advice from our in-state legislative and national legal counsel and others who know the process well, the industry determined that nothing would be gained by trying to influence Mr. Harshbarger on this subject. Furthermore, our involvement in that process would provide a coalescing point for our opposition.

The result is that the AG certified the measure but issued a relatively benign summary. To date we have no evidence that the opposition has formed a political committee as required by Massachusetts law.

**Phase II: Signature gathering monitoring**

To ensure we have a solid understanding of both the capability of our opposition and the likelihood of their qualifying this initiative, we need to closely watch their signature gathering process. I understand in 1992, when the opposition coalition qualified Question 1, the signature gathering process was relatively invisible to us until the latter stages. This is because they chose to circulate petitions in health care facilities.

We have activated all company sales forces, as well as those who work with us on local issues to keep an eye on potential circulation points for us. I have not received any reports of circulation yet, but expect to as soon as our opposition is serious about it.

**Phase III: Constitutional challenge of the AG's certification**

The Massachusetts Constitution allows for specific challenges to initiatives certified by the Attorney General. In this case our in-state counsel (Ferriter, Scobbo, et.al.) believe we have two issues which can be brought before the Massachusetts Supreme Judicial Court under Article 48 of the Constitution. The first issue relates to the fact that the initiative contains two unrelated issues (age restrictions and nicotine content). The second issue relates to the fact that the title is misleading ("Cal's Bill"). The instate attorneys in conjunction with counsel at Covington & Burling believe that the first issue has a better chance of success than the second. Neither is a slam dunk but they are worth the try.

The action will be filed in November. The SJC will take up the case only if the proponents file the requisite number of valid signatures (roughly 65,000) and the Secretary of State certifies the issue for the ballot. There is a protracted briefing and argument schedule allowed in this process which means that the SJC will probably not render a decision on the challenge until the spring (March or April).

#### **Phase IV: Signature challenge**

Depending on the total number of signatures submitted by the proponents of the initiative and the geographic distribution, we may wish to employ a signature challenge strategy. Proponents must not only submit the required number of signatures on a statewide basis, they must also obtain not more than 25% of the total from any one county. Arguably it is easier for them to get signatures in Suffolk county than in some of the counties from the less populated areas of the state. As a consequence if they concentrate their effort in only a few counties and are relatively close to the total number of valid signatures, we could employ a challenge strategy.

To embark on this strategy we would use the advice of our in-state legal team (Bob Rodophele and Gerry Caruso) to advise us on what constitutes invalid signatures and then do a case by case analysis to determine if we can get enough challengable signatures to knock it off the ballot.

#### **Phase V: Legislative Strategy**

The process in Massachusetts calls for the legislature to have a role. Once the Secretary of State certifies that a sufficient number of valid signatures have been submitted on the issue, the measure is submitted to the legislature. The legislature has three possible actions:

- 1.) They can approve the measure at which time it becomes law.
- 2.) They can disapprove the measure or take no action, at which time the proponents can circulate petitions for an additional number of signatures (approximately 10,000). If they achieve the additional valid signatures the measure goes on the ballot for November.
- 3.) They can approve their own version of the measure at which time both measures go on the November ballot.

The legislature has until the third week of May, 1996, to act. We should postpone making a strategic decision about how we would want the legislature to act until we get a full picture of the legislative and political landscape for next year.

**Phase VI: Campaign to defeat the initiative**

While it is much too early to determine what issues could be used to defeat the initiative, we are prepared to survey in the field how the measure is defeatable. The determination of strategy, tactics, and budget for the campaign will follow from there and from extensive discussion with the industry team and various other company representatives.

You will note that the timeline for some of these phases overlap and some are dependent on the outcome of others. Beginning in December, we will have regular meetings in Massachusetts to discuss all facets of the effort and to make sure that our battles on all fronts in that state dovetail appropriately.

I hope this rundown is helpful. Please let me know if you have any questions.

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